



California Performance Review

Comments – GG 37

The Civil Justice Association of California (CJAC) would like to provide comments on the California Performance Review (CPR) proposal to address the critical issue of governmental tort liability.

GG 37 - Limit State's Liability to Actual Fault

The report summarizes this issue as follows:

"California pays millions of dollars in civil judgments each year. California should join the vast majority of states and adopt a cap on the government's liability to protect the taxpayers from exorbitant judgments. The state should also reform other aspects of tort law to further protect the taxpayer and improve the state's business climate."

The Civil Justice Association of California recognizes that excessive liability and judgments dramatically impact the cost for services provided by government entities. California businesses and local governments have been struggling with this same issue for years.

Our organization recommends that improvements in this area of law be applied to all government entities, not just the State of California, and that any changes be crafted to not unfairly shift liability costs to private defendants.

The CPR recommends the Governor working with the legislature to do the following:

1. Amend the California Tort Claims Act to limit the state's liability to \$1 million for an individual and \$5 million per occurrence.
2. Amend the Code of Civil Procedure to allow juries to be instructed on the effect of finding any party, including the state, partially liable.
3. Amend the design immunity statute, Government Code Section 830.6, to clarify that the judge, not the jury, should determine the applicability of the statute.

We concur with recommendation 3. However, CJAC is concerned that 1. and 2. may have unintended consequences, i.e., where there are multiple defendants -- some public, some private -- the proposals may unfairly shift costs to a private defendant. We would appreciate the opportunity to work with all interested parties to craft legislation fair to all parties. CJAC wants to ensure the solution crafted will not unfairly burden businesses and will not deter California's economic recovery.

Our Association sponsored Proposition 51 in 1986, a measure that established comparative fault for non-economic damages and applies uniformly to public and private defendants. We coordinated support from business and state and local government entities to win public support of this initiative. We are gathering reactions to GG 37 from those among our membership with long experience with the fault allocation issue and hope to share our findings with the CPR team.

The Civil Justice Association of California is a non-profit, membership-supported coalition of citizens, taxpayers, businesses, local governments, professionals, manufacturers, financial institutions, insurers, and medical organizations. Founded in 1979, CJAC is the only statewide association dedicated solely to improving California's civil liability system. It is active in both the Legislature and the courts, working to reduce the excessive and unwarranted litigation that increases business and government expenses, discourages innovation, and drives up the costs of goods and services for all consumers.